

**07 C 6785**

**JUDGE KENNELLY  
MAGISTRATE JUDGE SCHENKIER**

# EXHIBIT 1

Int. Cl.: 41

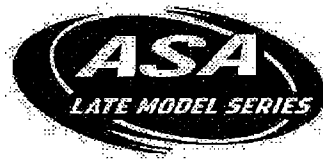
Prior U.S. Cls.: 100, 101 and 107

Reg. No. 3,035,680

**United States Patent and Trademark Office**

Registered Dec. 27, 2005

**SERVICE MARK  
PRINCIPAL REGISTER**



VARNEY, LOUIE R., JR. (UNITED STATES IN-  
DIVIDUAL)  
7360 ELM  
LEXINGTON, MI 48450

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "LATE MODEL SERIES", APART  
FROM THE MARK AS SHOWN.

FOR: ENTERTAINMENT SERVICES, NAMELY,  
SANCTIONING OF AUTOMOBILE RACING  
EVENTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

SER. NO. 78-533,768, FILED 12-16-2004.

FIRST USE 12-12-2003; IN COMMERCE 12-12-2003.

BILL DAWE, EXAMINING ATTORNEY

# EXHIBIT 2

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 77/233764

**MARK:** ASA RACING

**\*77233764\***

**CORRESPONDENT ADDRESS:**

WILLIAM L. NIRO  
NIRO, SCAVONE, HALLER & NIRO  
181 W MADISON ST STE 4600  
CHICAGO, IL 60602-4676

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Racing Speed Associates,  
LLC

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

TM2220

**CORRESPONDENT E-MAIL ADDRESS:**

**OFFICE ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE:**

**Section 2(d) - Likelihood of Confusion Refusal**

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3035680. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978). TMEP §§1207.01 *et seq.*

In the present case, both marks are dominated by ASA. The additional wording in both cases must be disclaimed. While the examining attorney cannot ignore a disclaimed portion of a mark and must view marks in their entirety, one feature of a mark may be more significant in creating a commercial impression. *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986). Disclaimed matter is typically less significant or less dominant.

Further, both marks cover the organization of automobile races. If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980). TMEP §1207.01(b).

Because the use of such similar marks in connection with identical services creates a likelihood of confusion, registration of the applicant's mark must be refused.

*Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.*

#### **Disclaimers**

Applicant must disclaim the descriptive wording "racing" apart from the mark as shown because it merely describes features of the services. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a). The applicant's services concern automobile "racing."

The computerized printing format for the Office's *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use "racing" apart from the mark as shown.

*See In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

/Doritt Carroll/

Trademark Examining Attorney

Law Office 116

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[www.uspto.gov/teas/index.html](http://www.uspto.gov/teas/index.html)

**RESPOND TO THIS ACTION:** If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**Print: Oct 24, 2007**

**78533768**

**DESIGN MARK**

**Serial Number**  
78533768

**Status**  
REGISTERED

**Word Mark**  
ASA LATE MODEL SERIES

**Standard Character Mark**  
No

**Registration Number**  
3035680

**Date Registered**  
2005/12/27

**Type of Mark**  
SERVICE MARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

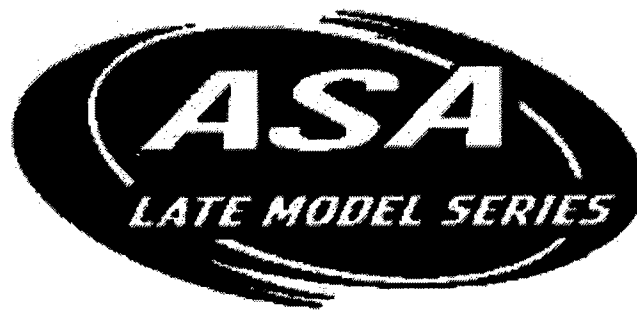
**Owner**  
Varney, Louie R., Jr. INDIVIDUAL UNITED STATES 7360 Elm Lexington  
MICHIGAN 48450

**Goods/Services**  
Class Status -- ACTIVE. IC 041. US 100 101 107. G & S:  
Entertainment services, namely, sanctioning of automobile racing  
events. First Use: 2003/12/12. First Use In Commerce: 2003/12/12.

**Disclaimer Statement**  
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LATE MODEL SERIES"  
APART FROM THE MARK AS SHOWN.

**Filing Date**  
2004/12/16

**Examining Attorney**  
DAWE, BILL





# EXHIBIT 3

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November 8, 2007

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OF COUNSEL:  
THOMAS G. SCAVONE

**Via Federal Express and Facsimile**

Mr. Louis P. Varney, Jr.  
Manager/Member  
ASA Late Model Series, LLC  
7360 Elm St.  
Lexington, MI 48450

Re: ASA Late Model Series

Dear Mr. Varney:

As you may be aware, we represent Dennis Huth and Racing Speed Associates, LLC ("RSA"). As you also may be aware, RSA recently purchased all of the rights in the ASA and ASA Racing trademarks and trade names, as well as all of the rights of American Speed Association, LLC under the November 2004 Agreement with you concerning the trademark "ASA Late Model Series."

As we previously advised your attorneys in February 2006, you did not acquire title to that trademark, only the limited right to use it in connection with your racing organization activities (see enclosed).

In the past few years, Mr. Huth has graciously allowed and encouraged you to use the ASA Late Model Series trademark in the interests of promoting harmony in the auto racing community and enhancing the ASA family of auto racing marks.

We have now learned, however, that you have illegally registered that mark, and have begun a campaign of harassment, threats and misinformation about your rights to the detriment of RSA and Mr. Huth. Specifically, we have seen e-mails from you to race track owners and race teams threatening those who do business with RSA and Mr. Huth with legal action in connection with his use of the ASA and ASA Racing logos.

You know, and have known for many years, that the rights you acquired from ASA are limited, and that the ownership rights of ASA in the trademarks noted were never transferred to you. In addition, you understand that ASA retained those ownership rights as well as the rights

November 8, 2007

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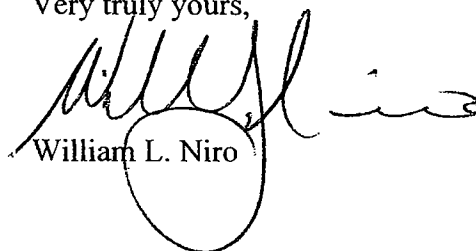
in the ASA family of trademarks. On January 10, 2006, Mr. Dale verified the limited rights granted to you under the November 2004 agreement (copy enclosed).

Your activities are a breach of the agreement with ASA, and a misuse of the limited rights granted to you. The threats you have made to those persons doing business with RSA and Mr. Huth have caused and will continue to cause damage to RSA. We, therefore, demand that the false and misleading communications with all third parties concerning your rights, and the threats that "further legal action will follow" cease immediately.

By reason of your misuse of the mark and actions taken, RSA, as successor in interest to American Speed Association, LLC, hereby declares you to be in breach of the November 2004 Agreement concerning the ASA Late Model Series trademark and all rights of use in that trademark are hereby terminated. The registration of that mark by you must either be cancelled or assigned to RSA.

Unless we receive written verification from you within ten days of this letter that you have ceased all communications with third parties, and agree to assign or cancel the trademark registration, RSA and Mr. Huth have authorized us to take whatever actions we deem appropriate to enforce their rights.

Very truly yours,



William L. Niro

WLN/mm

Enclosures

cc: D. Huth (w/encl.)  
A. Tradd (w/encl.)